No. 662, Misc.

In the

Supreme Court of The United States

October Term, 1957

LEMUEL SAM TROTTER,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

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STATE OF OHIO,
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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respondent, State of Ohio, prays that the petition for a writ of certiorari to issue to the Supreme Court of Ohio be denied.

(a) Reference to the official and unofficial reports of the opinions delivered in the Courts below.

The Supreme Court of Ohio, without an opinion, on December 24, 1957, dismissed this action on the grounds that no debatable constitutional questions were involved

and overruled a motion for leave to appeal. The judgment entries are appended hereto. (Appendix A)

The Court of Appeals, for the First Appellate District of Ohio, affirmed the judgment of the Court of Common Pleas of Hamilton County, Ohio, which affirmance was filed in the Court of Appeals on October 23, 1957. There was no written opinion. The judgment entry is appended hereto. (Appendix B)

The Court of Common Pleas of Hamilton County, Ohio, in which this cause was tried, sentenced petitioner to die in the electric chair after a jury convicted him of First Degree murder without a recommendation of mercy. Judgment entry is with original papers and not available to respondent at this time, so that it cannot be appended hereto.

The Court of Common Pleas of Hamilton County, Ohio, in which this cause was tried, overruled defendant's motion for a change of venue. Opinion appended hereto. (Appendix C). Said opinion was rendered out of the presence of the jury, prior to the swearing in of said jury.

(b) Statement of Facts

Around 5:00 o'clock in the afternoon of September 19, 1955, defendant, Trotter, met co-defendant, Jackson, in the City of Cincinnati, while walking along one of the city streets. These two men, along with co-defendant, Barnett, all had known one another while incarcerated in Kilby Prison, Alabama.

Defendant, Trotter, and Jackson went to Jackson's home, and then went to various cafes in and about the city. In one of the cafes they met co-defendant, Barnett. The three remained together drinking in various cafes.

After visiting the last cafe the three of them went to Jackson's home and obtained two guns, one being an automatic pistol, the other being a .38 S. & W. Special revolver. They then set out to commit a robbery at a place which was at that time undecided by the three.

However, they started walking eastwardly on Sixth Street in the City of Cincinnati (Trotter having the .38 S. & W. Special revolver, Jackson having the automatic weapon) and as they neared the Grey Eagle Cafe Jackson suggested that that be the scene of their robbery. Whereupon Jackson gave Barnett the automatic pistol, at which time defendant, Trotter, went around to the side entrance of the cafe, while Barnett entered the front door.

Neither Barnett nor Trotter was seen entering the cafe by patrons in the cafe, until Trotter had placed himself in a position behind the bar and ordered the bartender to lie on the floor. It was at this point that the proprietor of the cafe noticed Trotter and approached him, asking what he wanted, to which Trotter replied "Don't move, so help me God I'll kill you". (R. 51) The proprietor, Gertrude Becraft, noticed that the man she identified as Trotter had a silver plated gun. She described how he was dressed. She noticed defendant, Barnett, trying to open a cash register at the food bar, and noticed that he had a little short gun.

Thereupon Trotter ordered the bartender and Mrs. Becraft into the washroom, and in a few minutes all of the patrons came into the washroom, which is at the rear of the cafe. Also ordered in the washroom was Walter Hart, a detective of the Cincinnati Police Department, who was in plain clothes, and who was killed by defendant Trotter in this hold-up robbery.

While in the washroom Walter Hart, the deceased, told everybody to stand back, and pushed open the door leading

from the washroom, commenced firing, and then entered the cafe proper. A slug from Hart's gun was taken from Barnett's back after his capture. In a matter of seconds the shooting was over, and the patrons who had been herded into the washroom came out into the cafe and found Walter Hart, the deceased, lying on the floor, bloody and unable to speak. Immediately before his collapse on the floor he had attempted to use the telephone. He had taken the 'phone off the hook, had dialed a couple of numbers before collapsing. (R. 38)

At the time of the shooting there were two plain clothes detectives cruising in a westerly direction on Sixth Street toward the Grey Eagle Cafe. They heard the shooting and immediately drove over in front of the cafe and got out of their car. Prior to entering the cafe they noticed a man standing in front of the cafe, which man was later identified by them to be the man, Jackson. They entered the cafe, saw the deceased lying on the floor, and then called for the life squad and assistance, and they, along with other detectives, immediately began scouring the neighborhood for suspects.

Shortly thereafter the co-defendant, Barnett, was found hiding behind a door in a hallway running off of Sixth Street, approximately a hundred feet from the Grey Eagle Cafe. Said defendant, Barnett, had been shot, his clothes were bloody, and he had in his possession some of the money that had been taken from the cafe.

The police department at that time put a watch on all the outgoing roads leading from Cincinnati, including check stations on all the bridges. The defendant, Jackson, was apprehended while attempting to cross one of the bridges leading into Kentucky. Prior to Jackson's apprehension police officers went to his apartment, and there found in his apartment a pair of trousers in which was

found the card case belonging to Walter Hart, deceased. In the top of the refrigerator was found the automatic pistol, along with some rolls of money identified as coming from the Grey Eagle Cafe.

In the meantime, Barnett had been taken to the Cincinnati General Hospital for treatment, and while there, defendant, Jackson, was taken to the hospital for identification purposes by Barnett. Barnett identified Jackson as one of the participants. Thereafter Barnett and Jackson entered into a combined confession of their participation in this crime, and implicated defendant, Trotter. (This confession was not used in the trial of Trotter.)

Defendant Trotter, after leaving the scene of the crime, went to the home of a friend where he had left clothing. The clothing he had sent to this address from Alabama. While at this friend's house he changed clothes and told her that he had had some trouble and he had shot a guy. Later he changed that to "He said I shot at a nigger — that is what he said". (R. 133-134) It was while he was changing clothes that Laura Williams and Rosa Burton saw that he had a silver looking gun, or nickle plated gun. (R. 133 and 139)

He left this house and went to the room where he had been staying and there took the empty cartridges out of the gun and threw them out of the window looking over the roof of a garage at the rear of said building, where they were found fifteen months later. He then made his escape from the city, and was not apprehended until February of 1957 in Selma, Alabama, after which he was returned to this jurisdiction for trial having waived extradition after a hearing in Selma.

(c) When And How Federal Questions Were Raised

Petitioner, in the Court of Appeals of the First Appellate District of Ohio, Hamilton County, Ohio, and in the Supreme Court of Ohio, never raised a Federal question. The one question raised in both courts, and which is presently being raised, was.

> "The failure of the court to grant motion for a change of venue."

There were not presented arguments or suggestions that the failure of the court to grant a motion for a change of venue was in violation with the Constitution of the United States, Article XIV, Section 1.

It was presented and argued that the change of venue should have been granted pursuant to Section 2931.29 Ohio Revised Code, and that the trial court committed error in not granting that motion.

> R. C. 2931.29: "If it appears to the court of common pleas, by affidavit or evidence in open court, that a fair and impartial trial cannot be had in the county where a cause is pending, such court shall order the accused tried in another county. The clerk of the court of common pleas of the county in which the cause is pending shall make a certified transcript of the proceedings in the case, which, with the original indictment or information, he shall transmit to the clerk of the court of the county to which said case is sent for trial, and the trial shall be conducted as if the cause had originated in the latter county. The prosecuting attorney of the county in which the cause originated shall take charge of and try said cause, and the court to which said cause is sent may on application appoint one or more attorneys to assist the prosecuting attorney in such trial, and allow the appointed attorneys reasonable compensation."

(d) Argument

1. Petitioner Was Not Denied Due Process of Law by the Trial Court's Denial of Petitioner's Motion for a Change of Venue.

It is not now, nor has the respondent ever contended otherwise that the robbery, murder, death of a police officer, escape of the trigger man, and manhunt were combined in this case to give the entire series of events a vast amount of publicity. Said publicity was sporadic over a fifteen month period – first at the time of the armed robbery and killing, and then a long lull and then the capture of Trotter.

At the hearing on the motion for a change of venue the respondent did not oppose the offered testimony by way of oral testimony or by way of exhibits. The petitioner offered certain portions of the published items as Exhibit 1, and without objection from the respondent, they were received (R. 314).

The question presented is not one of how much publicity or what publicity. The true question is did the trial court abuse discretion in overruling the motion for change of venue. Whether or not a trial court will grant a motion for a change of venue is within the sound discretion of that court and is conclusive, in the absence of abuse of discretion.

Dorger v. *State*, 40 O. A. 415, 179 N. E. 143.
State v. *Lingafelter*, 77 O. S. 523.
Richards v. *State*, 43 O. A. 212, 183 N. E. 226.
Ralls v. *State*, 40 O. A. 69, 177 N. E. 77; 43 O. A. 129, 182 N. E. 691.
Lutes v. *State*, 37 O. A. 353, 174 N. E. 745.
State v. *Sheppard*, 165 O. S. 293.

The examination of jurors on their voir dire affords the best test as to whether or not prejudice exists in the

community against the defendant, and where it appears that the opinions, as to the guilt of the defendant, of those called for examination as jurors are based on newspaper articles and the opinions so formed are not fixed, but would yield readily to evidence, it is not error to overrule an application for a change of venue.

Townsend v. *State*, 17 O. C. C. (N.S.) 380
(Affirmed without opinion, 88 O. S. 584.)

A court must examine into the facts and circumstances as to whether an impartial trial can be had in the county in which the offense is committed, and neither affidavits alone nor the mere conclusion of witnesses to the fact that a fair trial cannot be had is sufficient.

State v. *Geiger*, 16 O. D. (N.S.) N. P. 581.

At the outset of the trial, in response to defendant's motion for a change of venue, the record discloses (R. 22 and R. 23):

THE COURT: "Then the hearing on the matter of your motion for a change of venue will be continued."
MR. ABRAMS: "We ask that it be continued."
THE COURT: "Of course, we will proceed with the selection of a jury."
MR. ABRAMS: "That is agreeable."
THE COURT: "That is agreeable with the defendant?"
MR. ABRAMS: "That is agreeable with the defendant."

The question is not to be decided on the volume of the publicity, or the tendency such publicity may have had in influencing the public mind generally as to the petitioner's guilt or innocence. The best possible evidence can be de

rived only in the voir dire examination of the selection of jurors.

There were a total of forty-seven (47) prospective jurors examined, of which only seven (7) were challenged for cause on the basis of having an opinion as to the guilt or innocence of the petitioner. Five (5) of this group were excused from service.

Petitioner's counsel unsuccesslully challenged only two additional jurors on this basis, not three as indicated on page 12 of petitioner's petition. Prospective juror, John Handorf, was challenged for another reason (R. 102 – R. 105), appended hereto. (Appendix D)

One of the two aforementioned challenged ultimately was seated as a juror. That was a decision of the petitioner. In the examination of that juror it developed that she had a son who was in the ministery (R. 106) appended hereto. (Appendix D, pg. 3)

The petitioner apparently considered this fact and had faith in the integrity of this individual in her response to questions on voir dire examination (R. 107-108; R. 111-113).

17 jurors were excused as being opposed to capital punishment.
5 jurors were excused as having an opinion.
1 juror was excused because of a personal experience.
3 jurors were excused preemptory challenge by petitioner.
5 jurors were excused preemptory challenge by respondent.
13 jurors were seated, 1 as an alternate.

47

The trial court conducted the voir dire examination in a fair and impartial manner, and did not slant its questions as charged in petitioner's argument. Each time

there was a challenge for cause the court propounded the law and asked the specific questions of the prospective juror, based on the statement of the law. (R. 104; 108; 114) Appended hereto. (Appendix E)

The voir dire examination for twelve jurors, over a period of two complete days, covering 283 pages of testimony, demonstrated how thorough this was conducted in order to insure the selection of twelve impartial jurors.

If the jury system is to remain a part of our system of jurisprudence the courts and litigants must have faith in the entire honesty of our citizens in performing their duty as jurors.

The jurors demonstrated their honesty in their forthright answers to all questions propounded. To say that the jury was not an impartial one is to say that they violated their oath on voir dire examination, as well as violated their oath as jurors.

Voir dire examination of the thirteen jurors who were seated to hear this cause concerning opinions, if any, as to the guilt or innocence of the defendant, is appended hereto. (Appendix F) A perusal of this examination clearly demonstrates that a fair and impartial jury was selected and heard this case.

2. Petitioner Was Not Deprived of Due Process of Law in the Hearing Before the Court of Appeals of the First Appellate Judicial District of Ohio, Hamilton County, Ohio.

The second question presented by the petitioner categorically states that Exhibit 1 in support of petitioner's motion for a change of venue, was not forwarded to the Court of Appeals for Hamilton County, Ohio.

The entry of affirmance, the Court of Appeals, First Appellate Judicial District of Ohio, Hamilton County, Ohio, is appended hereto. (Appendix B)

The Court of Appeals heard the appeal on:

1. Questions of Law.
2. Original Papers.
3. Transcript of the docket and journal entries.
4. The bill of exceptions.

Petitioner infers on page 15 of the petition (by underscoring) that original papers would include exhibits.

This cannot be. Original papers include the transcript from the municipal court binding the case over to the grand jury of Hamilton County, Ohio, the indictment, any and all motions and entries filed in the case. Exhibits, however, are a part of the bill of exceptions in any case. In this case counsel for the petitioner had a stipulation detaching all exhibits from the bill of exceptions (R. 270) Now petitioner complains that the exhibits (Exhibit 1 particularly) were not before the Court of Appeals because not fastened to the record of the testimony and trial.

Petitioner well knew that the exhibits were not physically attached to the bill of exceptions. No reference was made to the Court of Appeals or the Supreme Court as to Exhibit 1 in the Bill of Exceptions.

Neither court was requested, or urged, or suggested to read Exhibit 1 in order to rule on the issues raised in these respective courts.

Petitioner now urges error in violation of due process, basing same on circumstances never before raised, and in which the petitioner willingly and knowingly participated in the normal course of appellate proceedure.

There were a total of twenty-seven (27) exhibits, twenty-six (26) of which were exhibits admitted into the evidence for consideration by the jury, exhibit 1 being a group of publicity items introduced in support of the motion for change of venue. All 27 exhibits were treated in an identical manner as exhibit 1 referred to by petitioner. All

these exhibits were detached from the record and retained in one separate package, to prevent the Bill from being wholly unwieldy.

In any case being appealed to the Court of Appeals, First Appellate District of Ohio, Hamilton County, Ohio, the only "stamping" that is done is on the face of the bill of exceptions. No separate exhibits are stamped with a Court of Appeals stamp, any more than the individual pages of the bill of exceptions are stamped.

Then, as now, there was no denial by the respondent that the case before, during, and after trial received great publicity. The only question to be decided by the Court of Appeals was, did the trial court abuse discretion in refusing to grant a change of venue. How was the Court of Appeals to decide that question? Not by a perusal of newspaper clippings, but rather by a review of the voir dire examination of jurors.

The petitioner was not denied an appellate review. The Court of Appeals and the Supreme Court of Ohio both heard this matter presented by briefs and argument, on virtually an admitted factual statement as to the events that took place during the hold-up, murder, and during the trial.

The Court of Appeals properly decided on the questions of law, original papers, transcript of the docket and journal entries, bill of exceptions, and arguments of counsel. It held there was no error apparent upon the record of judgment prejudicial to the rights of the petitioner.

It is submitted there was no error by any other standard either.

3. PETITIONER WAS NOT DEPRIVED OF DUE PROCESS OF LAW OR OF EQUAL PROTECTION OF THE LAWS WHEN PETITIONER APPEALED TO THE SUPREME COURT OF OHIO.

The third question presented by the petitioner for this Court's consideration is whether petitioner was denied due process or equal protection of the laws when the bill of exceptions was not forwarded to the Supreme Court of Ohio. Petitioner quotes on page 6 and 7 of the petition only a portion of the judgment of the Supreme Court of Ohio. Omitted is the most important portion of that judgment, which reads:

> "This question came on to be heard *upon the transcript of the record of the Court of Appeals of Hamilton County* upon the motion of the appellee to dismiss the appeal filed as of right herein, and was argued by counsel." (Emphasis added.)

The Supreme Court of Ohio properly recited that it heard the case on the transcript of the record of the Court of Appeals of Hamilton County, for the reason that petitioner's counsel did not see fit, or apparently feel it necessary to use *Section 2505.08 Ohio Revised Code*, in that he did not ask for a transcript of the testimony to be filed in the Supreme Court.

> **R. C. 2505.08**: "Within ten days after filing a notice of appeal, or the order allowing an appeal or a certified copy thereof, where permission to file the appeal is required, the clerk of the court from which the appeal is taken or a judge thereof, shall, upon being paid the lawful fees and the filing of a praecipe therefor, prepare and file in the court to which the appeal is taken, a transcript of the docket or journal entries, with such original papers or *transcripts as are necessary to exhibit the error complained of. The transcript of*

the testimony or bill of exceptions or so much thereof as may be necessary for said appeal may be filed within such time as is provided for in the rules of court. The cost of the production of the transcript of testimony or of the bill of exceptions shall be paid initially by the party perfecting the appeal, reimbursement therefor to be made in the assessment of the cost by the court. If the transcript and papers are not filed within said time either party may apply to the court to which the appeal is taken to have the case docketed and the court shall order them filed." (Italics ours.)

Petitioner filed in the Supreme Court of Ohio:

1. Notice of appeal – appended hereto. (Appendix G)

2. Motion for leave to appeal– appended hereto. (Appendix H) the same being filed pursuant to Sections 2953.02, 2953.08, and 2505.29. Said Sections provide as follows:

R. C. 2953.02: "In a criminal case, including a conviction for the violation of an ordinance of a municipal corporation, the judgment or final order of a court or magistrate inferior to the court of common pleas, may be reviewed in the court of common pleas, and a judgment or final order of a court or officer inferior to the court of appeals may be reviewed in the court of appeals. A judgment or final order of the court of appeals in a conviction of a felony, or the court of common pleas in conviction of a felony or misdemeanor, and a judgment of the court of appeals involving the constitutionality of a statute, or a judgment in a case of public or great general interest, may be reviewed by the supreme court. The supreme court in a criminal case or proceeding, except when its jurisdiction is original, shall not be required to determine as to the weight of the evidence."

R. C. 2953.08: "An appeal shall not be filed in the supreme court except upon good cause shown, upon motion and notice to the prosecuting attorney and the attorney general as in civil cases, or unless such motion

is allowed by the supreme court, or, in capital cases by two judges thereof, or in other cases by one judge thereof. In cases involving questions arising under the constitution of the United States, or of this state, such leave is not necessary."

R. C. 2509.29: "No appeal shall be filed in the supreme court unless such court or a judge thereof grants leave to file such an appeal. Such leave need not be obtained to file an appeal as to the judgment or final order of the court of appeals, or a judge thereof, in cases involving questions under the constitution of the United States, or of this state, in cases which originated in the court of appeals, and as to proceedings of administrative officers as may be provided by law."

The last sentence of the notice of appeal reads as follows:

"Said appeal is on questions of law and debatable constitutional questions, and on condition that a motion for leave to appeal be allowed by the Supreme Court of Ohio."

Respondent filed in the Supreme Court of Ohio a motion to dismiss the appeal, appended hereto. (Appendix I)

Petitioner's motion for leave to appeal and respondent's motion to dismiss the appeal were heard by the Court at the same time.

Again the matter of publicity was before the Court by way of briefs and arguments of the petitioner pursuant to petitioner's procedure for appeal. There was no question raised as to whether or not the case received a great amount of publicity – then, as now, that point was conceded.

The Supreme Court of Ohio decided on the transcript of the record of the Court of Appeals, upon the motion to dismiss of the respondent and upon the argument of counsel that "no debatable question is involved in said cause." It further, in the same judgment, overruled petitioner's motion for leave to appeal.

4. THE SUPREME COURT OF OHIO HAS NOT DECIDED A FEDERAL CASE OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH APPLICABLE DECISIONS OF THIS COURT.

Petitioner does not present the question to this Court as a question presented for review that the Supreme Court of Ohio in affirming the decision of the Court of Appeals of the First Appellate District of Ohio has decided a federal question of substance in a way not in accordance with the applicable decisions of this court.

Petitioner, however, does present arguments on that point in the petition. The main contention in petitioner's argument on this point is that the prosecutor "fed" the press with evidence and statements and that the prosecutor was a conscious participant in trial by newspaper. Such question was never presented at any time in the court of appeals or the supreme court of Ohio. In fact, in the argument presented by petitioner's counsel in support of the motion for change of venue the following is said:

> "Then we have interviews with the prosecutor and the prosecutor states — I do not say this critically of the prosecutor — with reference to the state's procedure; the fact they did not have the gun, etc., and we have editorials in the newspapers about getting the killer." (R. 313)

We think it apparent from the record that former counsel of the petitioner did not believe, feel, or have the slightest idea that the prosecutor was participating in trial by newspaper. If such thought had entered their minds the statement would not be contained in the record as it is.

Again we come back to the same test to decide whether or not a fair and impartial trial could be obtained to determine the issue in this cause.

Again reference is made to the voir dire examination of the jurors and the results of such examination in obtaining a jury after a bare minimum of expressions by prospective jurors of having formed opinions as to the guilt or innocence of the petitioner.

(e) Conclusion

Petitioner's petition for a writ of certioari to the Supreme Court of Ohio should be denied.

Petitioner received a fair and impartial trial, regarding which petitioner does not claim otherwise. The only contention advanced is that a change of venue should have been granted, and upon that premise petitioner claims error in the proceedings in the Court of Appeals and in the Supreme Court of Ohio.

It is respectfully urged that there is no basis for granting a writ of certiorari.

WHEREFORE, your respondent respectfully prays said petition herein be denied.

Respectfully submitted,

C. WATSON HOVER,
Prosecuting Attorney

MELVIN G. RUEGER,
Ass't. Prosecuting Attorney
Attorneys for Respondent, State of Ohio

APPENDIX A

JUDGMENT OF THE SUPREME COURT OF OHIO

Current Journal — Supreme Court of Ohio
The Supreme Court, January Term A. D. 1957
Tuesday, 24th Day of December A. D. 1957

No. 35415

THE STATE OF OHIO,
Plaintiff-Appellee,

vs.

LEMUEL SAM TROTTER,
Defendant-Appellant.

Appeal from the Court of Appeals of Hamilton County

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Hamilton County, upon the motion of the Appellee to dismiss the appeal, filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause. It appearing to the Court that the date heretofore fixed for the execution of the Judgment and sentence of the Court of Common Pleas is now past, this Court proceeding as required by law to fix a date for carrying said sentence into execution, it is ordered by the Court that said sentence be carried into execution by the Warden

of the Ohio Penitentiary, or in his absence by the Deputy Warden, on the 23rd day of January A. D. 1958, in accordance with the statutes in such case made and provided. It is further ordered that a certified copy of this entry and a warrant under the seal of this Court be duly certified to the Warden of the Ohio Penitentiary and the Warden make due return thereof to the Clerk of the Court of Common Pleas of Hamilton County; and it further appearing to the Court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered and adjudged that the appellee recover from the appellant its costs herein expended, taxed at $. . . . . .

Ordered, that a special mandate be sent to the Court of Common Pleas of Hamilton County, to carry this judgment into Execution.

Ordered, that a copy of this entry be certified to the Clerk of the Court of Appeals of Hamilton County, "for entry".

APPENDIX A – CONTINUED

(CAPTION OMITTED)

MOTION FOR LEAVE TO APPEAL FROM THE COURT OF APPEALS OF HAMILTON COUNTY

It is ordered by the Court that this motion be, and the same hereby is, overruled.

APPENDIX B

JUDGMENT OF THE COURT OF APPEALS

COURT OF APPEALS
First Appellate District of Ohio
Hamilton County, Ohio

No. 8323

(CAPTION OMITTED)

ENTRY OF AFFIRMANCE OF COURT OF APPEALS, HAMILTON COUNTY, OHIO

(Filed October 23, 1957)

This cause came on to be heard upon the appeal on questions of law, original papers, transcript of the docket and journal entries, and Bill of Exceptions in the Court of Common Pleas of Hamilton County, Ohio, and was argued by counsel and submitted to the Court.

Upon consideration whereof, the Court finds that there is no error apparent upon the record of judgment prejudicial to the rights of the appellant herein.

IT IS THEREFORE ORDERED that the judgment of the Court of Common Pleas of Hamilton County, Ohio be, and the same hereby is, affirmed at the cost of the appellant herein, and the Court having heretofore granted a stay of execution until further order of this Court, the Court hereby appoints the 21st day of January, 1958, as the date of execution of the sentence imposed in the judgment herein affirmed. And the Clerk shall issue a warrant to the Sheriff of Hamilton County, Ohio, and to the Warden of the Ohio Penitentiary, under seal of this Court, committing him to carry the said sentence into execution on the date so appointed according to law.

IT IS FURTHER ORDERED that a special mandate issue out of this Court to the Court of Common Pleas of Hamilton County, Ohio, to carry this judgment into execution.

To all of which appellant hereby excepts.

APPENDIX C

OPINION BY TRIAL COURT OVERRULING MOTION FOR CHANGE OF VENUE

THE COURT: "While, of course, the Court is familiar with the publicity which the case has received and it is true that the Hart killing and the apprehension of the defendant were widely publicized, yet the examination of the prospective jurors in their voir dire examination thus far make it obvious to me that the defendant can be afforded a fair and impartial trial in this county. Out of the merely fifty prospective jurors who were examined under oath only four stated they had formed an opinion which would affect them in their deliberations in the case. All the rest, of course, had heard or read of the case but remembered few of the details and stated they could and would render a verdict based solely on the evidence adduced in open court. It is the law a person is to be tried in a county where the crime was committed unless for some reason he could not receive a fair and impartial trial. This case, I believe will be afforded a fair and impartial trial in this county and the motion for change of venue will be overruled. You may note exceptions for defendant and I will ask Prosecutor to present an entry saving an exception for the defendant."

APPENDIX D

CHALLENGING OF PROSPECTIVE JURORS:

John Handorf

Q. "As you know in this case also the person killed was a city detective, would that in and of itself cause you to have any prejudice or bias against the defendant in this case?"

A. "No, no."

Q. "The detective in this case was a white man and the defendant in this case is a colored man, would that cause you to have any bias or feeling against the defendant?"

A. "No, sir."

Q. "The detective, the slain man, was white?"

A. "No, sir."

Q. "The evidence may show in this case that the defendant had previously been convicted of some other offense, and of course, he paid the penalty for that, and we are not trying him for that; would that in and of itself cause you to have any bias or prejudice against the defendant which would prevent you from giving him a fair trial?"

A. "Well, to be honest with you, the fact that he broke the law once and that is against his record, yes, that might have something to do with making a decision."

Q. "In other words, if he was convicted before, although he paid the penalty, you would start off with prejudice against him which would have to be removed by the evidence?"

MR. RUEGER: "I object."

THE COURT: "The jury has a perfect right to take into consideration in determining the weight and credit which they will give to the witness. It would not matter

how many times this man had been convicted of another crime if he did not do this crime you would find him not guilty?"

A. "True."

Q. "Would that affect the degree to which you might find him guilty?"

MR. RUEGER: "I object."

THE COURT: "Sustained."

Q. "If your Honor please, it seems to me that he is going to start off prejudiced against him. I asked him the fact that the fellow had been convicted would that cause him before he heard any evidence in this case to be biased and prejudiced."

THE COURT: "I did not understand you to say that. If that is your evidence."

Q. (Question last preceding read: "Would that affect the degree which you might find him guilty?")

A. "I will say slightly, yes. In fact, if anybody breaks a law you often hear the expression, there is bad luck, bad luck against him already. It is natural for a person to assume if a man has broken the law once he breaks the law again. To be honest with you, I would be slightly prejudiced."

Q. "If your Honor please—"

Q. "I think it is natural for me to—I mean to be honest about it."

MR. ABRAMS: "I challenge this juror for cause."

THE COURT: "Mr. Handorf, before you hear any evidence in this case it is the law that this man is presumed to be innocent and that presumption remains with him until the State proved him guilty beyond a reasonable doubt. Now, if you do not hear any evidence about this man, it would not matter how many times he was convicted, he would not be guilty of this crime."

A. "That is true."

THE COURT: "It is the law if a person has a criminal record you have a right to consider that, not as to guilt or innocence in this cause, but whether or not you believe his testimony as a witness. If the Court instructs you that is the only way you could consider a previous record, would you be willing to follow that instruction?"

A. "I believe so, Judge."

THE COURT: "The challenge will be overruled."

Q. "Again, you say I believe so."

A. "Yes."

THE COURT: "The challenge will be overruled."

MR. ABRAMS: "Exception. Your Honor, outside of the challenge for cause—"

THE COURT: "I have overruled that, and exception. Do you have any further questions?"

MR. ABRAMS: "Your Honor, this prospective juror had a relative shot down in the west end. It seems to me that is another reason why, in support of the challenge for cause."

THE COURT: "The prospective juror has stated he did not know the degree he is related to the man in the first place, and in the second place, he said that would not have any effect upon his verdict in this case."

A. "Yes, Judge. I do believe he is a second cousin."

THE COURT: "Is that going to make any difference to you as a juror in this case?"

A. "Oh, no, no, it should not."

THE COURT: "Take Seat Number five."

Virginia K. Klein

A. "I have a grown son."

Q. "Is he married or at home?"

A. "He is in the ministery."

Q. "You understand, in the trial of a case the jury

decides the guilt or innocence of an individual based solely upon what is heard in the courtroom by way of witnesses under oath from the witness stand, where, incidentally, you are presently seated, after the conclusion of all the evidence and the arguments of we lawyers, Judge Hoy will explain the law to you members of the jury and you then retire to the jury room and discuss the merits of the case, and based upon what you have heard in the courtroom and the law as given by Judge Hoy, you then arrive at your verdict, not on anything you may have read or heard on the radio or television, could you do that?

A. "I think so."

Q. "Have you formed an opinion as to the guilt or innocence of this man based upon what you have read or heard?"

A. "I really do not know."

Q. "If anyone reads anything or hears anything in the newspaper or hears it on the radio or television, it makes an impression, it is bound to."

A. "Yes."

Q. "It makes some sort of an impression, there is no doubt, this case has made an impression on anyone who has read it.

A. "It would seem so, according to the paper.

Q. "But there is a difference between an impression and a determination by an individual as to the guilt or innocence of a person. That is what we are striving to find out. It would be unfair to have a person sit on this jury who has already made up his mind on that, and say, I am going to sit here and go through the motions, that would be unfair.

A. "Yes."

Q. "We want to try to find out and be sure to give you an opportunity to examine your own conscience, so to speak, at this time, that is the reason we interrogate jurors,

to find out how much a person has been impressed, if you do not have an opinion as to his guilt or innocence but if you do we should know, on either side."

A. "I cannot say for sure."

THE COURT: "The question is, whether she is willing to put aside any opinion, put out of her mind any opinion she has and decide this case not on what she read in the newspaper, which is second or third hand, which may or may not be true, and decide it only on what is heard in the court. Would you be willing to do that? Put out of your mind the things you read, because they may not be true at all."

A. "That is right.

Q. "You could do that?" "Yes."

Q. "Of course, Mrs. Klein, we could only ask you certain questions and they are self-searching questions because it is a difficult case. We want you to be as fair with us as you want us to be fair with you. Would you put aside any feeling or feelings which you might have as to the innocence or guilt of this defendant and let the trial start with him being presumed to be innocent?"

A. "I suppose".

Q. "Not what you suppose, Mrs. Klein. This is a serious matter."

A. "I know it"

Q. "We want a yes or no statement. We do not want suppose. There is too much at issue here for us to take suppose. We want you to search your soul and say positively, yes or no."

A. "Well—"

THE COURT: "You understand, you are being asked to state whether you would follow the law of this State as I give it to you and I would say to you, it is the law, that you must do that; the question is will you follow that. I

do not mean you are to suppose. You will or you will not."

A. "Yes, sir."

Q. "Your answer?"

A. "Yes."

Q. "Are any of the members of your family employed by or part of any law enforcement body? Are any members of your family employed by or part of or within a law enforcement body here in Hamilton County, or anywhere?"

A. "No."

Q. Mrs. Klein, have you read anything about this case in the papers?"

A. "Yes."

Q. "As a result of your reading have you formed any idea or opinion about the matter?"

A. "It is kind of hard not to in this case."

Q. "With that in mind did you discuss it with somebody after you read it, or heard it over the air?

A. "At home, probably, with my husband."

Q. "The probable guilt or probable innocence were also discussed, were they not?"

A. "Oh, I suppose."

Q. As a result of this probable discussion as to the probable guilt or probable innocence of Trotter you arrived at some sort of a decision, did you not?"

A. "Well, I suppose to a point."

Q. "You did arrive at a decision, did you not?"

A. "Yes."

Q. "So then as you sit there now you have some idea as to what your decision is as to the innocence or guilt of Trotter, at the present time, isn't that right?"

A. "Well, yes, sir, I guess so."

MR. FULTON: "We challenge for cause."

THE COURT: "Mrs. Klein, the question is, anybody who reads a newspaper article and has any sense comes to

some impression—gets some impression from what they have read, nobody can condemn you for that. The point is when a man is on trial charged with a crime he should be tried by jurors not by what they read or hear on the air, but what they hear in the courtroom."

A. "That is what I think. I want to be honest. I am not saying he is or not."

THE COURT: "You are not saying he is guilty or is not guilty?"

A. "I do not want to."

THE COURT: "What I want to know and all want to know is whether you are willing to put out of your mind anything that you heard or read about this case and decide the case only on what you hear in the courtroom, if you can do that; if you cannot do that and you should find him guilty or innocent on anything you read, that would not be fair."

A. "No."

THE COURT: "Anybody who says they read about the case and did not get some impression from what they read, I would not even believe."

A. "Yes."

THE COURT: "The question is whether you are going to be fair enough to say to yourself what I read is not evidence, only what I hear in the courtroom is going to influence my verdict. Can you do that?"

A. "I think so."

APPENDIX E

COURT QUESTIONING PROSPECTIVE JURORS

R. 104 THE COURT: "It is the law if a person has a criminal record you have a right to consider that, not as to guilt or innocence in this case, but whether or not you believe his testimony as a witness. If the Court instructs you that is the only way you could consider a previous record, would you be willing to follow that instruction?"

R. 108 THE COURT: "The question is, whether she is willing to put aside any opinion, put out of her mind any opinion she has and decide this case not on what she read in the newspaper, which is second or third hand, which may or may not be true, and decide it only on what is heard in the court. Would you be willing to do that? Put out of your mind the things you read, because they may not be true at all."

A. "That is right."

Q. "You could do that?"

A. "Yes."

R. 114 THE COURT: "I have already ruled on that.

Q. "Mrs. Klein, the fact that a grand jury of Hamilton County, Ohio, returned an indictment against Trotter, would not be construed by you as a fact that he was guilty of the crime charged would it?"

A. "No, absolutely not."

Q. "Do you understand the one-sided nature of a grand jury hearing?"

THE COURT: "How would she understand that? She is not a lawyer."

Q. "I am aware of that."

THE COURT: "I think you ought to ask questions that are within the realm of her experience. If the Court

should instruct you that the return of an indictment is no evidence of the defendant's guilt would you follow that instruction?"

A. "Yes, sir."

Q. "We pass."

THE COURT: "Take seat No. 6 in the jury box."

APPENDIX F

VOIR DIRE EXAMINATION OF SEATED JURORS BY PETITIONER'S COUNSEL CONCERNING OPINIONS.

John D. Hite -- Juror Seated No. 1.

Examination by Petitioner's Counsel

R. 302 Q. "We are appealing to your conscience to give us the correct answers. Have you ever discussed the guilt or innocence of the defendant as a result of what you read or heard or formed an opinion?"

A. "I have heard other peoples to me. I have never formed any myself."

Q. "Have you ever expressed any opinion with reference to the guilt or innocence of the defendant?"

A. "No, sir, I have never had anything to do with the case until I was called down here."

Q. "Since you were called down here did you talk to any prospective jurors about the merits of the case?"

A. "No. Can't get nothing out of nobody."

R. 304 Q. "The Court will charge you one of the possible verdicts in this case is guilty with recommendation of mercy. In that event, if the facts in this case justify that, that is, recommendation of mercy, would you have any hesitancy in bringing in such a verdict?"

A. "No. Others have had the same chance. I think he is entitled to it."

Esther Schwarberg – Juror Seated No. 2

Examination by Petitioner's Counsel

R. 45 Q. "Do you take the Enquirer?"

A. "The morning Enquirer and the Times-Star."

Q. "And you have not seen anything in there since approximately February 5th or 6th, 1957?"

A. "I have not read anything in detail in those papers about it."

Q. "Then you are now informing us that you have not read anything about Trotter at all, even though it was in the newspaper?"

A. "No, sir. I really do not know much about the case."

Q. "My question is simply this, you have not read or seen anything in the newspapers, on the television, or heard it over the radio since February of this year concerning the Trotter case?"

A. "The only thing I have seen in the paper has been the selection of a 75 person jury and before that I had not followed it at all in the papers or radio or television."

R. 46 Q. "If the Court advised you that mercy was one of the possible verdicts that could be brought in would you hesitate in joining with the others and likewise sign such a verdict?"

A. "I would not hesitate in case I thought he deserved mercy."

Q. "One other question. If you are selected as a juror you will decide the case as you think down there, not what ten or eleven others think?"

A. "I would decide the way of my heart and conscience."

Juanita Rack – Juror Seated No. 3

Examination by Petitioner's Counsel

R. 58 Q. "There was a tremendous amount of publicity about this case in the newspapers."

A. "Yes."

Q. "At that time did you discuss with anyone what you read in the newspaper? In other words, did you express any opinion about the guilt or innocence of the defendant?

A. "I do not think so."

Q. "Of course, this is a very serious case and very important, it involves the possible death sentence. You say you are not sure if you did or did not discuss it with anybody. I mean, express any opinion at that time?"

A. "You mean just an opinion?"

Q. "Yes."

A. "No."

R. 41 Q. "If the Court charges you that one of the possible verdicts in this case is a recommendation of mercy, would you have any hesitancy in joining with eleven other jurors in recommending mercy, if the facts warrant it?"

A. "No."

Betty Duncan – Juror Seated No. 4

Examination by Petitioner's Counsel

R. 68 Q. "Mrs. Duncan, I believe you said you had read a little about this case in the newspaper; would that be in February of this year or would it be in 1955, the fall of 1955?"

A. "I think it was this year."

Q. "Did you see anything on television?"

A. "No."

Q. "Did you hear anything on radio concerning Trotter?"

A. "Not that I remember. You see, I work during the day and I do not have much chance to listen to the radio or television."

R. 69 Q. "I believe you said in response to a question by Mr. Rueger that you do not have an opinion about the guilt or innocence of this defendant; you did give him such an answer when he asked you how you would be able to treat the matter if it were presented to you?"

A. "Yes."

R. 70 Q. "If you were instructed that mercy could be and might be a part of your verdict, would you hesitate in joining with the others if they so desire to sign a verdict recommending mercy, would you hesitate on that?"

A. "No, I would not."

Mary Washington — Juror Seated No. 5

Examination by Petitioner's Counsel

R. 233-234 Q. "In other words, as it is now you have no idea as to the guilt or innocence of Trotter, is that right?"

A. "That is right."

Q. "And you have read the newspapers?"

A. "Yes."

Q. "And you have listened to the radio?"

A. "Yes, I have."

Q. "And you have seen the television."

A. "I have not looked at television lately."

Q. "Way back."

A. "I never look at television too much because most of the time I am tired when I get home."

Q. "You have not seen or heard anything which would

cause you to form an opinion as to the guilt or innocence of Trotter as of now?"

A. "No; that is right."

Q. "And if you were selected as a juror, as Mr. Hover said, there are certain types of cases that call for certain types of punishment and if a recommendation of mercy was one of the charges or statements the Court would advise, that would grow out of this particular offense would you have any hesitancy in signing such a verdict?"

A. "No."

Virginia Klein – Juror Seated No. 6

Examination by Petitioner's Counsel

R. 112-113 Q. "As a result of this probable discussion as to the probable guilt or probable innocence of Trotter you arrived at some sort of a decision, did you not?"

A. "Well, I suppose to a point."

Q. "You did arrive at a decision, did you not?"

A. "Yes."

Q. "So then as you sit there now you have some idea as to what your decision is as to the innocence or guilt of Trotter, at the present time, isn't that right?"

A. "Well, yes, sir, I guess so."

MR. FULTON: "We challenge for cause."

THE COURT: "Mrs. Klein, the question is, anybody who reads a newspaper article and has any sense comes to some impression – gets some impression from what they have read, nobody can condemn you for that. The point is when a man is on trial charged with a crime he should be tried by jurors not by what they read or hear on the air, but what they hear in the courtroom."

A. "That is what I think. I want to be honest. I am not saying he is or not.

THE COURT: "You are not saying he is guilty or is not guilty?"

A. "I do not want to."

THE COURT: "What I want to know and all, want to know is whether you are willing to put out of your mind anything that you heard or read about this case and decide the case only on what you hear in the courtroom, if you can do that; if you cannot do that and you should find him guilty or innocent on anything you read, that would not be fair.

A. "No."

THE COURT: "Anybody who says they read about the case and did not get some impression from what they read, I would not even believe."

A. "Yes."

THE COURT: "The question is whether you are going to be fair enough to say to yourself what I read is not evidence, only what I hear in the courtroom is going to influence my verdict. Can you do that?"

A. "I think so."

Eva Zimmer – Juror Seated No. 7

Examination by Petitioner's Counsel

R. 287 Q. "This thing happened back in September, 1955, a year and a half ago, and then when Trotter was arrested, I think around February, 1957, a tremendous lot of publicity in the newspaper, radio and television; do you remember reading it and seeing it on television?"

A. "I did not read much about murder cases."

R. 289 Q. "Both sides are trying to get a jury to decide the case, coming in with an open mind, decide it, not on what you may have heard on the radio or saw on television or read in the newspaper, or any conversation out in the hallway, but on the witnesses testimony here in

the courtroom, on the evidence and the law as given to you by his Honor, Judge Hoy, and then render a fair and impartial verdict, do you think you could do that?

A "I think I could."

Beatrice Schroff – Juror Seated No. 8

Examination by Petitioner's Counsel

R. 281 Q. "There is nothing wrong – you usually look at the papers, don't you?"

A. "Yes, I do."

Q. "And you did not pay any more attention to the Trotter matter than anything else in the paper?"

A. "No."

Q. "With reference to the radio, the same thing?"

A. "Yes, sir."

Q. "As you sit there now, do you have any opinion presently as to the guilt or innocence of Trotter?"

A. "No, sir."

Q. "Have you ever discussed the Trotter case with anyone?"

A. "No, I have not. I made it a point not to."

Q. "When people tried to talk to you about it you did not talk to them?"

A. "There had not been anybody very much to talk about it. You do not discuss that."

Q. "No one has desired to discuss it with you?"

A. "No.".

R. 282 Q. "If you are selected as a juror you are willing to enter the jury box open minded as to the innocence or guilt of Trotter, is that correct?"

A. "Absolutely."

Margarette Schubert – Juror Seated No. 9

Examination by Petitioner's Counsel

R. 201 Q. "Now Mrs. Schubert, you know there has been a tremendous lot of publicity in this case, everybody read about it.

A. "Why sure."

Q. "Newspaper and radio and television. Of course, you heard it and read about it?"

A. "Yes."

Q. "When you did did you have any discussion or talk about it to anybody with reference to how you felt with reference to the guilt or innocence of the defendant in this case?"

A. "No, sir. I am usually home alone."

Q. "In other words, say, with your husband, did you express any opinion at that time with reference to whether he was guilty or not guilty?"

A. "No, sir, I have not formed any opinion whatsoever."

Forrest F. Miller – Juror Seated No. 10

Examination by Petitioner's Counsel

R. 166-167 Q. "There has been a tremendous amount of publicity in this case in the newspapers, television and radio. Of course, we all listen to that and read the newspaper, and it is only natural and of course you have read the newspaper about this case?"

A. "Yes, sir."

Q. "And you also listened to radio and television about this case. In so doing did you have occasion to ever discuss it with anybody, talk it over?"

A. "No, not any discussion about it."

Q. "I mean, any talk, which would be a natural thing."

A. "Oh, well, not any real discussion."

Q. "What I am trying to bring out, whether in this discussion, you probably had talks about it – we all did – whether or not you expressed an opinion with reference to the guilt or innocence of the defendant?"

A. "No."

Q. "There were television and radio broadcasts in which Trotter was interviewed and statements made by the prosecuting attorney. Did you listen to those statements?"

A. "Last night, what I seen on television, I would not even know what was going on here yesterday. You read it and look at it and that is it."

Q. "There is no impression in your mind one way or the other with reference to the guilt or innocence of the defendant in this case?"

A. "No, sir."

Elsie Thomas – Juror Seated No. 11

Counsel for Petitioner did not ask any questions regarding opinion of this juror.

Examination by Prosecuting Attorney

R. 244-245 Q. "This case arises out of an event which occurred in September, 1955. There was a holdup in the Grey Eagle Cafe at Sixth and Elm Streets and in that holdup it is charged this man, Trotter, shot and killed Walter Hart while perpetrating that holdup. There was a great deal of publicity at that time regarding that event and subsequent to that, February, 1957, this man, Trotter, was apprehended and again there was some publicity regarding his apprehension. Do you recall reading about that or hearing it on the radio or television?"

A. "I read some of it."

Q. "As a result of what you have read have you formed an opinion as to the guilt or innocence of the man?"

A. "No, I have not."

Emma J. Hennessy – Juror seated No. 12

Examination by Petitioner's Counsel

R. 190-191 Q. "You understand, this case we are trying is not a case for revenge; you understand, if that was so we would be wasting all our time and the State's money. Have you read about the case in the newspaper?"

A. "Yes."

Q. "A tremendous lot of publicity, both on radio and television and the newspapers – of course, there is nothing wrong about having read it. In reading about it did you ever discuss it with anyone, say, your husband, or anybody else?"

A. "No, I do not remember discussing it."

Q. "You have not, as a result of what you read, expressed any opinion one way or the other as to whether or not the defendant was guilty in this case?"

A. "No, I do not believe I did."

Q. "Of course, it is very important in a case like this because this is a matter involving life and death. Did you or did you not?"

A. "No."

Q. "You are pretty sure?"

A. "Pretty sure. I am positive."

R. 193 Q. "Let me ask you this, too, if the Court charges you that one other possible verdict in this case is a recommendation of mercy, which means life imprisonment, if the facts justify it, would you hesitate to join with eleven other jurors to bring in a verdict with recommendation of mercy?

A. "Not if I thought it was justified."

Q. "That is what I mean, if you thought it was justified. What we are trying to do on both sides, is get a jury to try the case not on what you may have heard in the corridor, radio or television or newspapers but on what the witnesses testify to here in the courtroom under oath and the law as given by his Honor, Judge Hoy, and nothing else and then render a fair and impartial verdict. Do you believe you could do that?"

A. "I think I could."

Q. "Under the law a man is presumed to be innocent and that presumption carries all through the trial. Will you follow the Court's instructions with reference to that presumption of innocence?"

A. "Yes."

Mary Lyon — Juror Seated No. 13

Examination by Petitioner's Counsel

R. 319-320 Q. "You read about that in the newspaper?"

A. "No, because I do not read the paper."

Q. "Don't you take a newspaper?"

A. "Yes, we take a newspaper."

Q. "You take it every day?"

A. "Yes."

Q. "You did not read about it in the last year and a half?"

A. "No."

Q. "You listen to the radio?"

A. "Yes."

Q. "And Television?"

A. "Yes."

Q. "Did you hear anything about it on television?"

A. "I heard about it on television."

Q. "There is nothing wrong about that, you understand, we all listen. There has been a tremendous lot of publicity on this thing and there is nothing wrong about anybody listening to it. The point is, after you did listen, did you discuss it and talk it over with anybody?"

A. "No."

Q. "In other words, did you voice an opinion with reference to the guilt or innocence of the defendant in the case?"

A. "No."

APPENDIX G

(CAPTION OMITTED)

NOTICE OF APPEAL

The Appellant herein, Lemuel Sam Trotter, who was Defendant in the Common Pleas Court of Hamilton County, Ohio, and Appellant in the Court of Appeals, hereby gives notice of appeal to the Supreme Court of Ohio, from a judgment rendered by the Court of Appeals, for the First Appellate District on October 23, 1957, affirming the judgment of conviction rendered by the Court of Common Pleas of Hamilton County, Ohio, against this Defendant-Appellant. Said Appeal is on questions of law and debatable constitutional questions and on condition that a Motion For Leave to Appeal be allowed by the Supreme Court of Ohio.

NOTICE AND ACKNOWLEDGMENT

Notice is hereby given to the State of Ohio of the intention of Defendant-Appellant to file the foregoing notice of appeal, and that a Motion for Leave to Appeal will be filed in the Supreme Court, and that said Motion will be heard upon a date to be fixed by the Clerk of said Court who will notify counsel for the State of Ohio.

.....

.....

Service of a copy of the foregoing is hereby acknowledged this 24th day of October, 1957.

.....

Prosecuting Attorney
Hamilton County, Ohio

.....

Ass't Prosecuting Attorney
Hamilton County, Ohio

APPENDIX H

IN THE SUPREME COURT OF OHIO

No. 8323

(CAPTION OMITTED)

MOTION FOR LEAVE TO APPEAL

Now comes the Appellant herein and moves the Court for leave to appeal in the above entitled cause, to reverse the judgment of the Court of Appeals of Hamilton County, Ohio, in an action therein pending wherein this Appellant was Appellant and the State of Ohio was Appellee, said judgment of the Court of Appeals affirmed the judgment

of the Court of Common Pleas, which Court rendered judgment in favor of the State of Ohio and against the Appellant.

Said Appellant represents that error has intervened in the trial prejudicial to the said Appellant in the particulars set forth in the assignment of error to be filed herein.

. . . . . .

. . . . . .

State of Ohio, Appellee, will take notice that the foregoing Motion will be filed in the Supreme Court of Ohio, that the same will be heard on a date to be fixed by the Clerk of said Court, notice of which said Clerk will give to counsel. A copy of the above Motion is delivered herewith.

. . . . . .

. . . . . .

Service of a copy of the foregoing Motion and Notice is hereby acknowledged this 24th day of October, 1957.

. . . . . .

Prosecuting Attorney
Hamilton County, Ohio

. . . . . .

Asst. Prosecuting Attorney
Hamilton County, Ohio

APPENDIX I

IN THE SUPREME COURT OF OHIO

(CAPTION OMITTED)

MOTION TO DISMISS

No. 35415

Now comes the Plaintiff-Appellee and moves the Court to dismiss the appeal as of right for the reason there are no debatable, constitutional questions involved in this case.

.....

C. WATSON HOVER
Prosecuting Attorney

.....

MELVIN G. RUEGER
Ass't. Prosecuting Attorney

NOTICE AND ACKNOWLEDGMENT

Notice is hereby given to the Defendant-Appellant that the foregoing Motion will be filed in the Supreme Court, and that said Motion will be heard along with Defendant-Appellant's Motion for Leave to Appeal.

Service of a copy of the foregoing Motion and Notice is hereby acknowledged this ____ day of December, 1957.

.....